United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 10-2212**
	)	**Issued: June 2, 2011**
DEPARTMENT OF THE ARMY, U.S. ARMY CORPS OF ENGINEERS, Memphis, TN, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 30, 2010 appellant filed a timely appeal from an April 19, 2010 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case. The Board also has jurisdiction to review the Office hearing representative's August 19, 2010 nonmerit decision finding that appellant abandoned his request for a hearing.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on July 20, 2009; and (2) whether appellant abandoned his request for an oral hearing before an Office hearing representative.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 20, 2009 appellant, then a 49-year-old deckhand, filed a traumatic injury claim (Form CA-1) alleging that he sustained a back injury on that same date when he got up to answer the telephone and tripped over a table and hurt his back. He informed the employing establishment on that same date. The employing establishment controverted the claim asserting that appellant was not on duty when he injured himself and had signed a quartering agreement which stated that the government was not responsible for any personal injuries that occurred during nonwork hours. A July 21, 2009 witness statement from Fred Allen reported that appellant was sitting down in the lobby and tried to get up and fell.

By letter dated March 8, 2010, the Office requested additional factual and medical evidence from appellant. By letter dated March 31, 2010, it requested he provide an updated telephone number for his file.

In an undated statement, appellant reported that he had not worked since July 20, 2009 due to a back injury at work and was placed on disability on September 9, 2009.

In a July 23, 2009 medical report, Dr. Rajagopal Girijashanker, Board-certified in internal medicine at the Veterans Affairs Medical Center, reported that appellant was complaining of low back pain after a recent fall at work when he was standing on some stairs and tripped on Monday, July 20, 2009. She noted that his pain was in his lower back with radiation into the left hip and leg. Upon physical examination of the spine, Dr. Girijashanker reported that there was tenderness over the L3-4 vertebrae and in the left paraspinal region. She also stated that the L-spine film from July 21, 2009 was negative for an acute problem and early degenerative arthritis was present.

In an undated narrative statement, appellant reported that on July 20, 2009 he was storing items under the lobby stairway when he tripped over a folding table and fell into chairs and buckets, hitting his head on the wall. He stated that he was sore and that the left side of his back felt numb with a sharp pain so he went to the hospital the following day.

By decision dated April 19, 2010, the Office denied appellant's claim on the grounds that there was no medical evidence that provided a diagnosis which could be connected to the July 20, 2009 employment incident. It specifically noted that "low back pain" is not considered a diagnosis. The Office did find, however, that the July 20, 2009 incident occurred as alleged.

On April 27, 2010 appellant requested an oral hearing by telephone before an Office hearing representative.

By letter dated May 10, 2010, the Office provided appellant with information concerning hearing laws and procedures. By letter dated June 24, 2010, it notified him that his hearing would be held on August 5, 2010 at 10:45 a.m. eastern time. The Office provided appellant with a toll free number to call at that time to be connected to the Office hearing representative and court reporter.

By decision dated August 19, 2010, the Office hearing representative found that appellant had abandoned his request for an oral hearing. The hearing representative noted that he received

written notice 30 days in advance of the hearing but failed to appeal. The Office representative also found no evidence that appellant contacted the Office either prior to or subsequent to the scheduled hearing to explain his failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[3]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[5] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS -- ISSUE 1

The Office found that the incident occurred as alleged on July 20, 2009. The issue therefore is whether appellant has submitted sufficient medical evidence to establish that the

[2] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[3] *Michael E. Smith*, 50 ECAB 313 (1999).

[4] *Elaine Pendleton*, *supra* note 2 at 1143.

[5] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[6] *James Mack*, 43 ECAB 321 (1991).

employment incident caused a back injury. The Board finds that he did not submit sufficient medical evidence to support that he sustained a back injury causally related to the July 20, 2009 employment incident.[7] The medical evidence is deficient on two grounds: first, it fails to provide a firm diagnosis; and second, there is no narrative opinion on causal relationship between a diagnosed condition and the employment incident.

In a July 23, 2009 medical report, Dr. Girijashanker reported that appellant was complaining of low back pain after a recent fall at work when he was standing on stairs and tripped. Upon physical examination, she reported that there was tenderness over the L3-4 vertebrae and in the left paraspinal region. Dr. Girijashanker stated that the L-spine film from July 21, 2009 was negative for an acute problem and opined that early degenerative arthritis was present. Her medical report fails to name a specific injury related to the accepted employment incident. Identifying degenerative arthritis does not provide support for a traumatic injury from the July 20, 2009 employment incident. Further, appellant's complaint of low back pain is a description of a symptom rather than a clear diagnosis of the medical condition.[8] This evidence is insufficient to establish his claim.

Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[9] The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[10] Thus, Dr. Girijashanker's medical report is insufficient to establish appellant's burden of proof.

Appellant himself has alleged that the July 20, 2009 employment incident caused his injury. His statements, however, do not constitute the medical evidence necessary to establish causal relationship. In the instant case, the record is without rationalized medical evidence establishing a causal relationship between the July 20, 2009 employment incident and appellant's alleged back injury. Thus, appellant has failed to establish his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides the right to a hearing before an Office hearing representative:

> "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is

[7] *See Robert Broome*, 55 ECAB 339 (2004).

[8] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[9] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[10] *See Lee R. Haywood*, 48 ECAB 145 (1996).

entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[11]

Chapter 2.1601.6.e(1) of the Office's procedure manual explains when an employee is considered to have abandoned his hearing request:

"A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.

"Under these circumstances, H&R [Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the DO [district Office]."[12]

ANALYSIS -- ISSUE 2

Following the Office's April 19, 2010 decision denying his claim for compensation, appellant requested an oral hearing before an Office hearing representative. On June 24, 2010 the Office notified him that his telephone hearing was scheduled for August 5, 2010 at 10:45 a.m. eastern time. It provided appellant with a toll free number and pass code to call in at the time of the hearing. Appellant did not request a postponement, failed to appear at the scheduled hearing and failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As all three conditions for abandonment are met, the Board finds that he abandoned his request for an oral hearing. The Board will therefore affirm the Office hearing representative's August 19, 2010 decision.

Appellant may submit additional evidence, together with a formal written request for reconsideration, to the Office within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a back injury in the performance of duty on July 20, 2009. The Board also finds that he abandoned his request for an oral hearing before an Office hearing representative on August 5, 2010.

[11] 5 U.S.C. § 8124(b)(1).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.e(1) (January 1999).

ORDER

IT IS HEREBY ORDERED THAT the August 19 and April 19, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 2, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board